STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Carol Ann Thomason Map 103-16-0-B, Parcel 53.00 Residential Property Tax Year 2006	))))	Davidson County

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on February 28, 2007. The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$40,000	$270,500	$310,500	$77,625

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on October 25, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Carol Ann Thomason, the taxpayer who represented herself. On behalf of the County were Ms. Jenny Hayes from the Department of Law of the Metropolitan Government and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence in the Windsor Tower Condominiums (apartment number 506) located at 4215 Harding Pike in Nashville, Tennessee. Mrs. Thomason stated that the property was acquired in March of 2006 by her and her now deceased husband, Bill Thompson.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A.§§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

> The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made *(emphasis added)*.

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control**. *(Emphasis added), Associated Pipeline Contractors Inc.,* (*Williamson* County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets, (*Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond her control prevented her from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that she is entitled to the requested relief.

In this case, the taxpayer neglected to request a hearing before the County Board of Equalization to contest the valuation issue. The County produced evidence(County's #4) that showed the Notice of the County Board dates were posted in the local paper on May 21, 2006, advising all taxpayers that:

> The Metropolitan Board of Equalization will convene in regular session on June 1, 2006 and will adjourn its regular session on June 16, 2006. The Metropolitan Board of Equalization will convene in special session on June 19, 2006. Appeals may be scheduled in person or by calling (615) 862-6059 weekdays between 8:00 am and 4:00 pm. "**June 16, 2006 is the last day appeals will be accepted"**

Ms. Hayes further produced evidence that showed the taxpayers paid the 2006 property taxes in two (2) installments, one payment on December 21, 2006 and the other on February 22, 2007 (County's #2). Mrs. Thomason stated that her husband died in April of 2007 and that he handled all the business for the family. She further stated that she did not realize the difference until she began to talk to her neighbors. She discovered that some of the taxpayers in Windsor Tower had obtained relief from the County Board in 2006 and she wants to be treated the same. Mrs. Thomason also stated that she intends to sell the property and in fact has a contract pending but felt she should try to get some relief on the taxes that will have to be paid at closing.[1] Since there was no change in the assessment for tax year 2006 the only Notice that the taxpayer would have received would have been the public notice that appeared in the newspaper.[2] The facts are clear and undisputed, when the property was purchased on March 6, 2006 (by the current appellant)

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[1] It will be the sellers' responsibility to pay the pro-rated portion of the property tax from January 1st until the date of closing.

[2] The last official notice was mailed on April 1, 2005, to the then owner Mary Jean Tomlin which showed that total value at $310,500, the same as the current value.

the value was as it presently is, it has not changed since April of 2005. The Thomason's had ample notice of the amount of the assessment; in fact they paid it, as previously noted. They could have filed an appeal within forty-five (45) days after the tax billing date in 2006 but they failed to do that as well [T.C.A. § 67-5-1412 (e)] and did not file the appeal timely nor has she shown *reasonable cause* to justify the non-compliance.

Even assuming arguendo that the State Board of Equalization had jurisdiction to hear the cause the taxpayers argument for equal treatment is without merit. The case law is replete with cases that essentially hold that it is of no consequence how much or how little your neighbors' property is valued but being able to demonstrate by competent evidence the fair market value of your own property that is essential in proving the County's values are incorrect.

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsup, 107 Tenn. 257, 64 S.W.193 (1901):

> It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own,** . . . (emphasis supplied)

In a more recent decision on a taxpayer's argument that the State Board could redress his grievance on "equitable" grounds, in a declaration by Administrative Judge Pete Loesch, when dealing with the same issue in *Theoda Dunn,* Henderson County, Tax Years 1999, 2000, 2001, 2002, 2003, 2004:

. . . as an administrative agency, the State Board's powers are limited to those delegated by the legislature. Thus, for example, in Trustees of Church of Christ (Obion County, Final Decision and Order, February 9, 1993), the Assessment Appeals Commission declined to backdate a church's claim of property tax exemption under T.C.A. § 67-5-212 on the following rationale:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise **equitable powers** and take into consideration the **unfortunate circumstances** that led it to delay its application. We have no power to waive the requirements of the exemption statute, however. *Id.* at p. 2.

See also Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).
(emphasis supplied)

In essence, this administrative judge can not, at this taxpayer's urging, change the value of her home because she wants to be treated the same as her neighbors and use that argument as justification to change the current values. Mrs. Thomason, the taxpayer must meet her burden in order to receive her requested relief, she must establish by clear and convincing evidence that the values are incorrect.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

> In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment.** Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects**. . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

ORDER

It is therefore ORDERED that the appeal is dismissed for lack of jurisdiction.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days**

from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 2nd day of November, 2007.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Carol Ann Thomason
Jenny Hayes, Esq.
Jo Ann North, Property Assessor for Davidson County